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DRAFT CODE OF CRIMES AGAINST THE PEACE AND SECURITY OF MANKIND

Proposal by Mr. Vargas Carreño

Article 21

Systematic or mass violations of human rights

1. An agent or representative of a State or anyone who acts with the authorization, support or acquiesence of a State and commits or orders the commission in a systematic or mass manner of any of the following acts:

(a) Murder;

(b) Enforced disappearance of persons. For the purposes of this Code, enforced disappearance shall be considered to be the act of unlawfully depriving a person of his freedom, in whatever way, followed by an absence of

information or a refusal to acknowledge his deprivation of freedom or to give information on the whereabouts of that person, thereby impeding the exercise of all his rights; 1/

(c) Torture;

shall, on conviction thereof, be sentenced to ... .

2. An agent or representative of a State who in the exercise of his functions participates in the adoption of acts or legislative, executive, administrative or any other measures which, de jure or de facto, entail:

(a) Establishing or maintaining over persons a status of slavery, servitude, or forced labour;

(b) Institutionalization of racial discrimination;

(c) Deportation or forcible transfer of population on social, political, racial, religious or cultural grounds;

shall, on conviction thereof, be sentenced to ... .

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1/ The Inter-American Convention on Forced Disappearance of Persons, adopted in Belem do Pará, Brazil, in June 1994, defines enforced disappearance in the following terms in article II: "For the purposes of this Convention, forced disappearance is considered to be the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the State or by persons or groups of persons acting with the authorization, support or acquiesence of the State, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees".

For its part, the Declaration on the Protection of All Persons from Enforced Disappearance, adopted by the General Assembly of the United Nations on 18 December 1992 in resolution 47/133 states the following in the preamble: "Deeply concerned that in many countries, often in a persistent manner, enforced disappearances occur, in the sense that persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiesence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law,".